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80-1652
No.

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

In the Matter of the Arbitration

—between—

INTERNATIONAL PRODUCE, INC.,*

Petitioner,

—and—

A/S ROSSHAVET, Owners of the S.S. ROSS ISLE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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*International Produce Inc. is a wholly owned subsidiary of Bunge Corporation, a privately held corporate entity.

Questions Presented

A serious conflict exists between the decision of the United States Court of Appeals for the Second Circuit and the decision of this Court in *Commonwealth Coatings Corp.* v. *Continental Casualty Corp.*, 393 U.S. 145 (1968) with respect to the intent of Congress when, under the United States Arbitration Act, 9 U.S.C. §§1-14, Congress authorized vacation of an arbitration award "* * * when there was evident partiality * * *" (9 U.S.C. 10(b)). This Court, in *Commonwealth Coatings,* held that it was the intention of Congress, in condoning settlement of disputes through arbitration "to provide not merely for any arbitration but for an impartial one" (p. 147). This Court further held an "appearance of bias" satisfied the standard intended by Congress for the setting aside of arbitration awards and equated "appearance of bias" with "evident partiality" (p. 150).

In its decision of January 8, 1981, the Court of Appeals in effect abdicated its judicial responsibility to insure that arbitrations are not only impartial, but that the panel members avoid the appearance of being partial when it refused to accept the interpretation placed on §10(b) of 9 U.S.C. by this Court and reversed the District Court which had correctly interpreted the law and the facts on the authority and guidelines set down by this Court.*

Further, the Court of Appeals was in error when it refused to recognize a party's absolute right to reject an arbitrator after disclosure of a relationship that might create the impression of possible bias, under the guise that a contrary view would disrupt the process of settling maritime disputes through arbitration.

Thus, the basic question in this case is:

> Whether Congress intended that under the United States Arbitration Act parties who submit controversies to ar-

*The United States Court of Appeals for the Seventh Circuit is in conflict with the Second Circuit by recognizing the appearance of bias standard. *United States Wrestling Federation* v. *Wrestling Division of the AAU, Inc.*, 605 F.2d 313,317 (7th Cir., 1979).

bitration panels authorized by law to make non-appealable determinations are entitled to have arbitrators who could not reasonably be thought biased against one party and favorable to the other or in any way appear to be biased?

A subsidiary question is:

Whether a party to an arbitration has an absolute right to reject an arbitrator after there is a disclosure of a relationship that might create the impression of possible bias.

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, International Produce Inc. (International), prays that a writ of certiorari issue to review the judgment entered in this case on January 8, 1981, by the United States Court of Appeals for the Second Circuit.

Opinions Below

The opinion of the Court of Appeals which reversed and remanded the opinion of Judge Vincent L. Broderick of the United States District Court for the Southern District of New York, is not yet reported officially. A copy is reproduced in a separately bound appendix to this petition (App. 1a-10a)[1]. For ready reference the opinion of Judge Broderick holding in favor of petitioner, International, is reproduced in the separately bound appendix to this petition (App. 11a-19a)[2]. Also reproduced in the appendix to this petition is the decision and award of the arbitration panel (App. 24a-45a).

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on January 8, 1981. This petition is being filed within 90 days thereof. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) (1976).

Statute Involved

The relevant statute, which is reproduced in the separately bound appendix (App. 46a), is §10(b) of the United States Arbitration Act of 1925, 9 U.S.C. 1-14 (1976).

Statement of the Case

This case comes to this Court following the reversal by the Court of Appeals for the Second Circuit of an order of Judge Vincent L. Broderick rendered on April 16, 1980, wherein Petitioner's application to vacate an arbitration award was granted pursuant to 9 U.S.C. §10(b) (1976) on the grounds that the Chairman of the arbitration panel refused to withdraw from the panel after having been challenged for cause. (App. 11a-19a).

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[1]References are to pages of the separately bound appendix.

[2]Unofficially reported, *In the matter of arbitration between International Produce, Inc. and A/S Rosshavet,* 1980 AMC 2316 (S.D.N.Y.).

Based on the circumstances of conflict which developed during the course of the arbitration proceedings the District Court found a clear "appearance of bias" arose within the "evident partiality" provision of 9 U.S.C. §10(b) (1976).

Applying the teachings of *Commonwealth Coatings Corp.* v. *Continental Casualty Corp.* 393 U.S. 145 (1968) (hereinafter *Commonwealth Coatings*), the District Court held that where a disclosure gives rise to a well-founded objection by a party to an arbitrator's continuation as a member of the panel, the arbitrator must disqualify himself. (App. 15a)

The Court of Appeals for the Second Circuit reversed and remanded with direction to confirm the arbitration award. (App. 1a-10a)

Statement of the Facts

In March 1974, International, petitioner herein, entered into a charter party agreement with A/S Rosshavet (Rosshavet), for the hire of A/S Rosshavet's vessel, the S.S. ROSS ISLE. As a result of certain events which took place subsequent to the vessel's loading at Destrehan, Louisiana, in late March 1974, disputes arose between the parties. Invoking the arbitration clause in the charter party, International demanded arbitration and appointed Edward Schilling as arbitrator; Rosshavet appointed Lloyd C. Nelson. Mr. Schilling passed away and in his place International appointed Mack G. Klosty. Thereafter, the two arbitrators selected H. L. Cederholm as Chairman. Mr. Cederholm was, at the time of his selection as Chairman, at the time he was challenged, and still is, a Vice President of James W. Elwell & Co. Inc. and his duties concern managing the operations and chartering activities for the Elwell firm, which deals in the management of various vessels and the ownership of others.

The first arbitration hearing took place on September 9, 1977 during which opening statements were made by counsel but no witnesses were called. The next hearing took place on December 6, 1977, when Rosshavet produced two witnesses. Due to illness, one of the panel members, Mr. Nelson, could not be present; however, counsel for Rosshavet obtained the agreement of International's counsel to proceed with the understanding that the transcript would be made available to Nelson for reading at a later date. The next hearing was scheduled for January 17, 1978.

In mid-December 1977, Hill, Rivkins[3] was retained by one of its traditional clients to represent their interests in a substantial case involving a vessel called the MARY S. This vessel's interests were managed by Mr. Cederholm's firm, James W. Elwell & Co. Inc., and indeed the problem which gave rise to the claim in the MARY S. matter was one in which Mr. Cederholm

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[3]Hill, Rivkins, Carey, Loesberg, O'Brien & Mulroy, counsel for Petitioner, International.

was intimately and personally involved.[4] The defense of the owner's interest in the MARY S. matter at the time of the happening of the events which gave rise to the MARY S. dispute was referred by Mr. Cederholm, Elwell, the vessel's owner and/or their Protection and Indemnity Club to the firm of Haight, Gardner, Poor & Havens (Haight), *the same firm representing Rosshavet in the present case*. Additionally, it developed that Howard S. Miller, an associate in the Haight firm, was assisting both John C. Moore in the present case, and Thomas R. H. Howarth, the Haight partner who was dealing with the MARY S. case; and Messrs. Howarth and Miller had been advising Cederholm long prior to Hill, Rivkins' retention in that case.

When these circumstances came to the attention of J. Edwin Carey, the Hill, Rivkins partner who was representing International in the present case, and in view of the obvious conflict of interest with which Mr. Cederholm appeared to be faced, the matter was brought to the attention of International which gave instructions to challenge Mr. Cederholm and request that he withdraw as chairman of the panel in the ROSS ISLE matter.

On January 3, 1978, Carey telephoned Cederholm and related the various facts and circumstances of conflict, emphasizing the further fact that he (Cederholm) was personally concerned with the MARY S. case and would, in all likelihood, be called upon to give testimony in that case. He was informed that there was a serious conflict of interest on his part which gave rise to a presumption or appearance of bias and it was requested that he withdraw as Chairman of the ROSS ISLE Panel.

There followed a rash of correspondence, which began with Mr. Cederholm's letter of January 5, 1978, wherein he brought the matter of his "interrelationship" and International's demand that he withdraw to the attention of Mr. Moore of the Haight firm and the other members of the Panel and sought their com-

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[4]Judge Broderick found as a fact that Cederholm "* * * was personally involved in the negotiations and activities of December 8 and 9, which led to the disputes between the owner of the MARY S and its charterer. * * *" (App. 15a, footnote 1).

ments. Mr. Moore (Rosshavet's counsel) reacted with a letter of January 6, 1978, urging Cederholm not to withdraw. Mr. Carey (International's attorney) wrote on January 9, 1978, insisting that Cederholm step down, and Messrs. Klosty and Nelson (the other members of the panel), on January 12, 1978, wrote requesting Cederholm to remain.

On January 13, 1978, Mr. Cederholm wrote to Mr. Carey and stated, *inter alia,* "I respectfully decline to withdraw". He conditioned his decision to continue as chairman of the panel on the premise "that Mr. Howard Miller divorces himself from either the Ross Isle case or the Mary S. matter."

A further hearing was held on June 6, 1978, and subsequently an Award was rendered on July 1, 1979. (App. 24a-45a)

It is submitted that the Panel Chairman in the setting which prevailed in late December 1977 was in an irreconcilable position of conflict which gave rise to a presumption of bias on the basis of which he should have withdrawn. It is further submitted that this appearance of bias operated as an absolute impediment to his continuation as a member of the Panel and rendered further proceedings in the arbitration a nullity.

Cederholm's Impediments to Impartiality

In deciding not to withdraw from the Panel, Cederholm violated a most sacred tenet of one charged with the responsibility of adjudicating disputes between parties; he found himself in a position of non-neutrality where his impartiality had been challenged and was suspect.

It would be difficult to imagine where one could encounter a more substantial example of an appearance of bias or potential for bias than that which existed in the instant case. The fact pattern encountered includes the following ingredients:

> (1) Mr. Cederholm, sitting as Chairman of the ROSS ISLE Panel, was the Vice President of the Elwell firm which managed the MARY S for her owner;

(2) Mr. Cederholm was personally and intimately involved in making the decisions which precipitated the MARY S dispute;

(3) Hill, Rivkins was called upon to attack Cederholm's decisions and his credibility when representing the interests of the charterer of the MARY S;

(4) Mr. Cederholm retained the Haight firm, which actively advised him during the early stages of the MARY S. problem and actively participated in the MARY S arbitration as attorneys for the owner during the period when he was *sitting as chairman of a panel* in which Haight and Hill, Rivkins represented other adversary clients;

(5) Mr. Miller, an associate of the Haight firm, assisted in both cases until removed at the direction of Mr. Cederholm as a condition of Cederholm's continuing as chairman of the ROSS ISLE panel;

(6) Mr. Cederholm, during the pendency of the ROSS ISLE arbitration, regularly consulted with Haight on matters having to do with the MARY S defense;

(7) Mr. Cederholm gave more than 80 pages of testimony in the MARY S arbitration proceedings wherein he was represented by Haight and cross-examined by a Hill, Rivkins' partner;

(8) Mr. Cederholm would have a continuing and intimate relationship with the Haight firm, their members and associates, in preparing the defense of the MARY S case and preparing himself for the testimony he gave in that case;

(9) Mr. Cederholm instructed Haight to remove Mr. Miller, the common associate, from one case or the other;

(10) The MARY S arbitration was pending during the entire period of time when the ROSS ISLE panel, with Mr. Mr. Cederholm as Chairman, was continuing its hearings;

(11) After having made the decision not to retire from the panel, Mr. Cederholm recognized that neither Inter-National nor Hill, Rivkins consented to the "propriety" of his remaining, whereupon he proposed that Hill, Rivkins divest itself of the representation of its client in the MARY

S case. (With such a proposal, Mr. Cederholm, at the very least, gave the appearance of using his position as a neutral Chairman in one arbitration to weaken his opposition in another arbitration.)

Cederholm sought to maintain Chairmanship of the ROSS ISLE panel where Hill, Rivkins was representing International on the one hand and place himself, his credibility and decision making in the MARY S in an adversarial position with respect to Hill, Rivkins on the other. During the same time period Cederholm was represented by, and had an attorney/client relationship with the Haight firm in the MARY S case, which same firm represented Rosshavet in the ROSS ISLE case, which Cederholm had before him for decision.

Judge Broderick properly concluded that these relationships were more than trivial (App. 18a) and violated the standard set by this Court in *Commonwealth Coatings*.

The Proceedings Below

A. The Decision of the District Court

Consistent with the guidelines of *Commonwealth Coatings,* Judge Broderick found that the law as applied to the facts of this case required that the Award be vacated. (App. 16a; 18a). He refused to follow Rosshavet's argument that vacation of the Award was dependent upon a strict interpretation of "evident partiality" and accepted this Court's view as stated in *Commonwealth Coatings,* citing *Sanko S.S. Co.* v. *Cook Industries Inc.,* 495 F. 2d 1260 (2nd Cir., 1973) and *Overseas Private Investment Corp.* v. *Anaconda Co.,* 418 F. Supp. 107 (D. Colo. 1976), holding:

> "* * * In order for arbitration to remain effective, arbitrators must not only be honest but also above suspicion." (App. 15a)

The opinion of the District Court further stated:

> "Disclosure alone does not discharge the arbitrator's responsibility. If the disclosure gives rise to a well-founded objection, the arbitrator must disqualify himself. 'The point is, obviously, that disclosure is necessary to afford grounds and opportunity for objection.' *Miserocchi* v. *Peavey International Inc.,* 78 Civ. 1571 (S.D.N.Y., Sept. 15, 1978) (Frankel, J.)". (App. 15a, 16a)[5]

On the evidence presented, Judge Broderick properly held that (1) the totality of the Cederholm relationship to both law firms representing the parties in the ROSS ISLE case created an appearance of bias; (2) there was not only a potential for bias in favor of Rosshavet but also a potential for bias against

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[5]Judges Broderick and Frankel recognize the subtlety of Justices White and Marshall concurring with Justice Black in *Commonwealth Coatings,* 393 U.S. at 151 when they observe that rejection of the arbitrator is best consigned to the parties following an objectionable disclosure, when replacement is easy and of little cost.

International; (3) the potential for bias was aggravated by Cederholm's active involvement in the MARY S case, his continuing consultation with Rosshavet's counsel (Haight) in his and his employer's interest and his cross-examination by Hill, Rivkins (International's counsel) giving rise to an adversarial relationship which could be expected to be transferred to Hill, Rivkins' client. It was evident to Judge Broderick (as it should have been clear to the Court of Appeals had Judge Lumbard not misconceived the applicable law) that Cederholm's inter-relationships, to which International objected in early January, 1978, were substantial indeed and the great number of conflicts affecting the Panel Chairman were of such a partisan nature and of such substantial proportions that he should have disqualified himself when requested to do so.

The District Court recognized the "policy of insulating arbitration proceedings" but refused to abdicate its judicial responsibility of insuring that parties to an arbitration proceeding have the opportunity of having their disputes adjudicated by a tribunal which appeared to be impartial. (App. 18a)

B. The Decision of the Court of Appeals

The Court of Appeals reversed and remanded the case with instructions to confirm the arbitration award. (App. 10a). It did so because it misinterpreted and misapplied the 1968 decicision of this Court in *Commonwealth Coatings,* in which the majority of this Court gave effect to the intention of Congress insofar as it related to 9 U.S.C. §10(b) (1976). The Court of Appeals said that Judge Broderick was wrong to equate "an appearance of bias" with the statutory language "evident partiality" (App. 6a, 7a)—yet, that is exactly what Justice Black stated was the law.

Further, the Court of Appeals reasoned that the concurring opinions of Justices White and Marshall restricted the scope of the ruling "to situations where business and financial dealings with a party are not disclosed" (App. 7a); and that the concurring Justices disassociated themselves from Justice Black's ruling

when he wrote for the Court in respect of "appearance of bias". (App. 7a) The concurring Justices did no such thing! Indeed, they expanded on Justice Black's opinion, confirming that to do otherwise would be "an abdication of our responsibility", *Commonwealth Coatings,* 393 U.S. at 150. Finally, Justices White and Marshall, with respect to disclosure and a party's right of challenge, confirmed it is preferable that a disqualifying relationship be disclosed, "* * * when the parties are free to reject the arbitrator * * *. The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality. That role is best consigned to the parties, * * *". *Commonwealth Coatings,* 393 U.S. at 151.

It is clear that the Court of Appeals erred in its interpretation of the majority and concurring opinions of the Justices of this Court and by so doing expose arbitral litigants to highly hazardous situations of partiality and bias in any case other than ones where an arbitrator has had direct financial dealings with one of the parties. This was not the intention of Congress when it enacted the United States Arbitration Act as so aptly stated by this Court.

But consider that portion of the opinion of the Court of Appeals which cuts to the heart of the issue. Judge Lumbard wrote:

> "* * * a decision on our part to vacate arbitration awards *whenever a mere appearance of bias can be made out* would seriously disrupt the salutary process of settling maritime disputes through arbitration. * * *" (emphasis supplied) (App. 9a)

Thus, in the interest of avoiding what Judge Lumbard considered to be the possibility of disrupting the maritime arbitration process (which could not be the case in any event), the Court of Appeals abdicated its responsibility to insure that parties to arbitration proceedings, at all cost, appear before a completely unbiased and impartial tribunal, none of whom could even be considered to appear to be biased. In contrast, Judge Broderick recognized this subtlety and followed the direction of this Court in its annunciation of the rule. (App. 15a).

It is for these reasons that the petitioner asks this Court to invoke its reviewing authority in this case to remove the legal conflict by issuing a further definitive determination concerning the Congressional intent that parties are not only entitled to resolve their disputes through any arbitration, but that the arbitrators appear to be impartial.

Reasons for Granting the Writ

1. A conflict exists between the Supreme Court of the United States and the United States Court of Appeals for the Second Circuit Concerning Congressional Intent.

This case presents a threshold question of Federal law involving Congressional intent in respect of which this Court has heretofore ruled. The principal legal error committed by the Court of Appeals for the Second Circuit lies in its failure to find that the standard of "evident partiality" of 9 U.S.C. 10(b) (1976) includes the "appearance of bias" standard announced by this Court in *Commonwealth Coatings*. In its enthusiasm to avoid disrupting maritime arbitration, the Court of Appeals has virtually given carte blanche to arbitrators to remain on tribunals, elements of conflict of interest, bias and partiality notwithstanding. In such a setting, an aggrieved party who has a justifiable objection to a panel member is pre-empted and, apparently in the Second Circuit's view, may not reject an arbitrator unless there is a direct financial relationship between the arbitrator and a party. It is submitted that Congress never intended such a result. Indeed, this Court has held that there must be complete impartiality and freedom from bias among the members of the panel of arbitrators.

Significantly, this Court began its opinion in *Commonwealth Coatings*, 393 U.S. at 145 by stating:

> "At issue in this case is the question whether elementary requirements of impartiality taken for granted in every judicial proceeding are suspended when the parties agree to resolve a dispute through arbitration."

The Court emphatically held that such "elementary requirements" were not suspended and rejected the narrow construction placed on Section 10(b) of the Act by the lower courts and the dissent in that case. The Court held at p. 147:

"* * * These provisions show a desire of Congress to provide not merely for *any* arbitration but for an impartial one.* * *" (emphasis supplied)

Justice Black, writing for the majority of the Court, held that

a) §10(b) authorizes vacation of an award "* * * where there was 'evident partiality' * * *" and that the language of the statute shows a desire of Congress "* * * to provide not merely for any arbitration but for an impartial one * * *" (p. 147);

b) it is not appropriate for the Court to "* * * allow this manifest violation of the strict morality and fairness Congress would have expected on the part of the arbitrator and the other party in this case.* * *" (p. 148); and

c) "* * * we should be more scrupulous to safeguard the impartiality of arbitrators than judges since the former have completely free rein to decide the law as well as the facts and are not subject to review.* * *" (p. 149).

Comparing §18 of the American Arbitration Rules and the 33rd Canon of Judicial Ethics, this Court concluded:

"* * * that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias. We cannot believe that it was the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards that 'might reasonably' be thought biased against one litigant and favorable to another." (p. 150)

It was Justice White with whom Justice Marshall joined in a concurring opinion who made it clear that the role of rejection of an arbitrator is "best consigned to the parties", but that it would be "abdication of our responsibility" to give effect to an award where a member of the Panel was something less than completely impartial and unbiased.

Justice White's remarks were directed at (i) the inherent difference between an arbitrator and a judge and (ii) the need of full disclosure. Nowhere did he disassociate himself from the main thrust of the Court's opinion that a party is entitled to a fair hearing before a tribunal that "not only must be unbiased but also must avoid the appearance of bias." *Commonwealth Coatings,* 399 U.S. at 150.

We suggest that it was error on the part of the Court of Appeals to state that Justices White and Marshall "disassociated themselves from Justice Black" (App. 7a) in respect of that portion of the Court's opinion which equates "appearance of bias" with "evident partiality." Indeed Justice White stated at the outset of his opinion "* * * I am glad to join my Brother Black's opinion in this case,* * *". (p. 150)

2. Since *Commonwealth Coatings,* the Rule of "Appearance of Bias" Has Been Accepted Law.

Not only is the proper test in these impartiality/bias cases an objective one, but the types of facts which fall within the purview of the "evident partiality" language of Section 10(b) of 9 U.S.C. are myriad. Many of the cases which have considered the "evident partiality" language have dealt with the issues of disclosure and pecuniary interest. Although the Act does not specifically provide that there must be disclosure, it has been held that an arbitrator's failure to disclose requires that an arbitration award be vacated. Courts in other cases have also applied the principle to the facts; sometimes vacating, sometimes not, but always applying the "appearance of bias" principle.

In *Sanko S.S. Co. Ltd.* v. *Cook Industries,* 495 F. 2d 1260 (2nd Cir., 1973), the Court of Appeals for the Second Circuit remanded the case to the District Court for an evidentiary hearing to determine the extent of the arbitrator's involvement with one of the attorneys and, secondly, to determine the extent of the arbitrator's involvement with one of the parties. Presumably, if these relationships were significant, then the award would have to be vacated.

In *Overseas Private Investment Corp.* v. *The Anaconda Company,* 418 F. Supp. 107 (D.C. Col. 1976), one of the arbitrators (Sommers) had sought employment with a law firm (Curtis) who had assisted the trial counsel for Anaconda by obtaining an affidavit. The Court held that this relationship did not compel vacating the Award. However, "* * * if Curtis was Anaconda's counsel, the numerous meetings with Mr. Sommers would no doubt create the appearance of bias * * *." *Overseas Private Investment Corp.* v. *The Anaconda Company,* 418 F. Supp. at 111.

In *Miserocchi & Co. Spa* v. *Peavey International Inc.,* 78 Civ. 1571, (S.D.N.Y., Sept. 15, 1978) and in *Commonwealth Coatings,* a financial relationship between an arbitrator and a party required the Award to be vacated.

In other cases where there has been a failure to prove a significant relationship, the Awards have been upheld. However, no Court has rejected the *Commonwealth Coatings* holding that it was the intent of the Congress that "evident partiality" includes an "appearance of bias."

Moreover, as stated in *Andros Compania Maritima* v. *Marc Rich & Co.,* 579 F. 2d 691, 700 (2nd Cir., 1978):

> "These decisions demonstrate that we have viewed the teachings of *Commonwealth Coatings* pragmatically, employing a case-by-case approach in preference to dogmatic rigidity."

It was error for the Court of Appeals to disassociate itself from the rule established by this Court in respect of "evident partiality" and "appearance of bias."

3. The Parties' Congressional Guarantee That Their Disputes Be Adjudicated by an Impartial Tribunal is Paramount.

If the intent of Congress was, as this Court has stated, that §10(b) of 9 U.S.C. operates as a protective instrument to parties

so that they may be assured of arbitrating their disputes before not only unbiased tribunals, but panels made up of members who avoid even the "appearance of bias"; then surely the Court of Appeals must have been in error when it expressed concern that a decision on its part to vacate arbitration awards whenever there was an appearance of bias would disrupt the process of settling disputes through arbitration.[6]

A reaffirmation of the principles of fair dealings and impartial tribunals can only strengthen the arbitration process. The Court of Appeals for the Second Circuit noted in *Sanko S.S. Co. Ltd.* v. *Cook Industries Inc.*, 495 F.2d 1260 (2nd Cir., 1973) that arbitrations offer parties the ability to shape their own proceedings. The procedures for compelling arbitrators to step down are essential accoutrements which permit parties to be the architects of their own arbitrations. In that case the Court wrote:

> "Moreover, the role of the judiciary in determining an arbitrator's impartiality after an award has been made will be significantly reduced since the parties will have the opportunity at the outset of the arbitration *to reject or accept him with full knowledge of his connection with the other party.*" (footnotes omitted) *Sanko S.S. Co., Ltd.* v. *Cook Industries,* 495 F. 2d at 1264." (emphasis supplied)

It is, therefore, of the most urgent importance that this Court reaffirm a party's absolute right to reject an arbitrator for cause. The Congressional intent that those authorized by law to adjudicate disputes between parties be totally impartial and free from even an "appearance of bias" for or against one or either of the parties to the dispute is recognition of such a right.

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[6]See *Sanko S.S. Co.* v. *Cook Industries Inc., supra,* where the same Court expressed no such concern.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Dated: New York, New York
March 31, 1981

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